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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

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OFFICE OF PETITIONS

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|-----------------------------|---|------------------------|
| In re Application of | : | |
| Steve Doe | : | |
| Application No. 10/606,131 | : | ON APPLICATION FOR |
| Filed: June 24, 2003 | : | PATENT TERM ADJUSTMENT |
| Atty Docket No. 088245-0105 | : | |

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed June 20, 2008. Applicant requests that the initial determination of patent adjustment at the time of mailing of the notice of allowance be corrected from zero (0) days to four hundred seventy-five (475) days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent. In addition, pursuant to their duty of good faith and candor to the Office, applicant discloses two errors in their favor in the calculation of patent term adjustment.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to

the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that applicant is correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was filed in this application on March 17, 2008.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

To the extent that applicant requests review of the patent term adjustment pursuant to their duty of good faith and candor, the request is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including 157 days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 16, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days, including 62 days of applicant delay. Applicant discloses that an additional period of adjustment of 97 days should have been entered in connection with the filing of a response after non-final on February 15, 2007. In addition, as applicant filed the request for continued examination (RCE) on March 17, 2008 (and not March 16, 2008), the period of reduction associated with the RCE should have been 30 days, not 29 days.

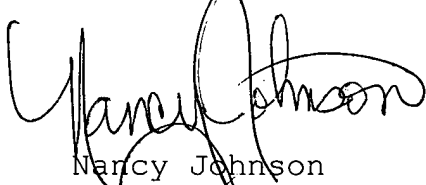
For the most part, applicant is correct. The record confirms that the RCE was filed on March 17, 2008, and therefore, the period of reduction pursuant to 37 CFR 1.704(b) is 30 days. Further, the response filed on November 13, 2006 contained an omission (See Notice of Noncompliant Amendment mailed February 8, 2007). On February 15, 2007, applicant filed a response correcting this omission. As such, pursuant to 37 CFR 1.704(c)(7), a period of reduction of 94 days (not 97) should have been entered for the period beginning the day after a reply containing an omission was filed, November 14, 2006, and ending on the date of filing of the response correcting the omission, February 15, 2007.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 0 days (including 157 days of applicant delay).

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue

Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

PTA Calculations for Application: 10/606131

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|--------------------------|------------|-------------------------|----|
| Application Filing Date: | 06/24/2003 | PTO Delay (PTO): | 37 |
| Issue Date of Patent: | | Three Years: | 0 |
| Pre-Issue Petitions: | 0 | Applicant Delay (APPL): | 62 |
| Post-Issue Petitions: | 0 | Total PTA (days): | 0 |
| PTO Delay Adjustment: | -95 | | |

File Contents History

| Number | Date | Contents Description | PTO | APPL | START |
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| 96 | 09/05/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 30 | |
| 95 | 09/05/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO | 29 | | |
| 94 | 09/05/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 94 | |
| 87 | 04/16/2008 | MAIL NOTICE OF ALLOWANCE | | | |
| 86 | 04/14/2008 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 85 | 04/14/2008 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 84 | 04/14/2008 | ISSUE REVISION COMPLETED | | | |
| 82 | 04/14/2008 | DOCUMENT VERIFICATION | | | |
| 81 | 04/14/2008 | NOTICE OF ALLOWABILITY | | | |
| 76 | 03/25/2008 | DATE FORWARDED TO EXAMINER | | | |
| 75 | 03/16/2008 | AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE | | | |
| 74 | 03/25/2008 | DATE FORWARDED TO EXAMINER | | | |
| 73 | 03/16/2008 | REQUEST FOR CONTINUED EXAMINATION (RCE) | | 29 | 64 |
| 72 | 03/25/2008 | DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA) | | | |
| 71 | 03/16/2008 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 70 | 03/17/2008 | WORKFLOW - REQUEST FOR RCE - BEGIN | | | |
| 69 | 02/13/2008 | MAIL ADVISORY ACTION (PTOL - 303) | | | |
| 68 | 02/08/2008 | ADVISORY ACTION (PTOL-303) | | | |
| 67 | 01/11/2008 | AMENDMENT AFTER FINAL REJECTION | | | |
| 66 | 01/16/2008 | DATE FORWARDED TO EXAMINER | | | |
| 65 | 01/11/2008 | AMENDMENT AFTER FINAL REJECTION | | | |
| 64 | 11/16/2007 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 63 | 11/13/2007 | FINAL REJECTION | | | |

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| 62 | 08/28/2007 | DATE FORWARDED TO EXAMINER | | | |
| 61 | 08/22/2007 | RESPONSE AFTER NON-FINAL ACTION | | | |
| 60 | 08/27/2007 | CORRESPONDENCE ADDRESS CHANGE | | | |
| 59 | 08/27/2007 | CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA) | | | |
| 58 | 06/04/2007 | MAIL NON-FINAL REJECTION | | | |
| 57 | 05/29/2007 | NON-FINAL REJECTION | | | |
| 56 | 02/26/2007 | DATE FORWARDED TO EXAMINER | | | |
| 55 | 02/15/2007 | RESPONSE AFTER NON-FINAL ACTION | | | |
| 54 | 02/08/2007 | MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT | | | |
| 53 | 02/05/2007 | MISCELLANEOUS ACTION WITH SSP | | | |
| 52 | 11/29/2006 | DATE FORWARDED TO EXAMINER | | | |
| 51 | 11/13/2006 | RESPONSE AFTER NON-FINAL ACTION | | 3 | 50 |
| 50 | 08/10/2006 | MAIL NON-FINAL REJECTION | | | |
| 49 | 08/07/2006 | NON-FINAL REJECTION | | | |
| 48 | 05/07/2006 | DATE FORWARDED TO EXAMINER | | | |
| 47 | 05/04/2006 | RESPONSE TO ELECTION / RESTRICTION FILED | | | |
| 46 | 04/06/2006 | MAIL RESTRICTION REQUIREMENT | 37 | | 42 |
| 45 | 04/03/2006 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 44 | 03/10/2006 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 43 | 11/03/2005 | DATE FORWARDED TO EXAMINER | | | |
| 42 | 10/31/2005 | APPEAL BRIEF FILED | | | |
| 41 | 09/14/2005 | NOTICE OF APPEAL FILED | | 28 | 35 |
| 40 | 09/14/2005 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 39 | 07/27/2005 | MAIL ADVISORY ACTION (PTOL - 303) | | | |
| 38 | 07/25/2005 | ADVISORY ACTION (PTOL-303) | | | |
| 37 | 07/08/2005 | DATE FORWARDED TO EXAMINER | | | |
| 36 | 07/06/2005 | AMENDMENT AFTER FINAL REJECTION | | | |
| 35 | 05/17/2005 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 34 | 05/16/2005 | FINAL REJECTION | | | |
| 33 | 03/14/2005 | DATE FORWARDED TO EXAMINER | | | |
| 32 | 03/03/2005 | RESPONSE AFTER NON-FINAL ACTION | | 2 | 31 |
| 31 | 12/01/2004 | MAIL NON-FINAL REJECTION | | | |
| 30 | 11/29/2004 | NON-FINAL REJECTION | | | |
| 29 | 09/23/2004 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
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| 28 | 09/23/2004 | DATE FORWARDED TO EXAMINER | | | |
| 27 | 09/16/2004 | RESPONSE TO ELECTION / RESTRICTION FILED | | | |
| 26 | 09/16/2004 | WORKFLOW INCOMING AMENDMENT IFW | | | |
| 25 | 08/18/2004 | MAIL RESTRICTION REQUIREMENT | | | |
| 24 | 08/16/2004 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 23 | 06/10/2004 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 22 | 01/07/2004 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) | | | |
| 21 | 01/07/2004 | NEW OR ADDITIONAL DRAWING FILED | | | |
| 20 | 12/15/2003 | REFERENCE CAPTURE ON IDS | | | |
| 19.7 | 12/15/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 19 | 12/15/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 18 | 12/19/2003 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 17 | 09/29/2003 | OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL) | | | |
| 16 | 06/24/2003 | PRELIMINARY AMENDMENT | | | |
| 15 | 11/06/2003 | APPLICATION IS NOW COMPLETE | | | |
| 14 | 11/05/2003 | APPLICATION RETURN FROM OIPE | | | |
| 13 | 11/06/2003 | APPLICATION IS NOW COMPLETE | | | |
| 12 | 11/05/2003 | APPLICATION RETURN TO OIPE | | | |
| 11 | 11/04/2003 | APPLICATION DISPATCHED FROM OIPE | | | |
| 10 | 11/05/2003 | APPLICATION IS NOW COMPLETE | | | |
| 9 | 09/29/2003 | ADDITIONAL APPLICATION FILING FEES | | | |
| 8 | 09/29/2003 | A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC | | | |
| 7 | 09/15/2003 | NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED | | | |
| 4 | 08/20/2003 | CASE CLASSIFIED BY OIPE | | | |
| 3 | 08/20/2003 | CLEARED BY OIPE CSR | | | |
| 2 | 08/12/2003 | IFW SCAN & PACR AUTO SECURITY REVIEW | | | |
| 1 | 06/24/2003 | INITIAL EXAM TEAM NN | | | |

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION